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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re SHARELLE HOLT

on Habeas Corpus.

B218912

(Los Angeles County
Super. Ct. No. BH005924)

APPEAL from an order of the Superior Court of Los Angeles County, Peter Paul Espinoza, Judge. Affirmed.

Edmund G. Brown, Jr., Attorney General, Julie L. Garland, Senior Assistant Attorney General, Jennifer A. Neill, and Charles Chung, Deputy Attorneys General, for Appellant.

Heidi L. Rummel and Michael J. Brennan, Post-Conviction Justice Project, University of Southern California Law School, for Respondent.

Sharelle Holt was sentenced in 1984 to an indeterminate term of 16 years to life in state prison for second degree felony murder. The Board of Parole Hearings (Board) found Holt suitable and granted parole in 2005, 2006, 2007 and 2008. On each occasion the Governor, exercising his authority under Article V, section 8, subdivision (b), of the California Constitution¹ and Penal Code section 3041.2,² reversed the Board's decision. In August 2009 the superior court granted Holt's petition for a writ of habeas corpus, finding the Governor's 2008 reversal was not supported by "some evidence" that Holt currently posed an unreasonable risk of danger to society if released and thus violated her right to due process under *In re Rosenkrantz* (2002) 29 Cal.4th 616 (*Rosenkrantz*) and *In re Lawrence* (2008) 44 Cal.4th 1181 (*Lawrence*). The warden of the California Institute for Women in Corona, where Holt had been incarcerated, appeals. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Commitment Offense

According to the records presented to the Board, in July 1983 Holt, then 30 years old, was addicted to heroin and had been abusing cocaine. She supported her \$150-to-

¹ Article V, section 8, subdivision (b), of the California Constitution provides, "No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action."

² Penal Code section 3041.2 provides, "(a) During the 30 days following the granting, denial, revocation, or suspension by a parole authority of the parole of a person sentenced to an indeterminate prison term based upon a conviction of murder, the Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority. [¶] (b) If the Governor decides to reverse or modify a parole decision of a parole authority pursuant to subdivision (b) of Section 8 of Article V of the Constitution, he or she shall send a written statement to the inmate specifying the reasons for his or her decision."

\$200-a-day drug habit through prostitution, stealing and “conning”; Holt acknowledged she was doing “whatever needed to be done” to obtain money.

On July 10, 1983, at approximately 2:00 a.m., while Holt was walking along the street “trying to hustle a ‘trick’ for money,” James Leon Brewer, a school teacher, stopped his pickup and offered Holt a ride. The two drove to a liquor store where Brewer bought some beer for them to drink. Holt then asked Brewer if he would lend her money to buy cocaine. Brewer agreed and drove Holt to another location where she purchased and smoked the cocaine. (There is some conflict in the various accounts whether both Brewer and Holt or only Holt smoked cocaine.)

Later, Holt told Brewer she was going to arrange to buy more cocaine and left him waiting in his truck. Holt met her crime confederate, Mike Richardson, informing him Brewer had a lot of cash and suggested he rob Brewer, telling Richardson Brewer “was a square and would be easy.” Richardson agreed, and Holt said she would direct Brewer to park on a side street.

Holt returned to the truck, and Brewer drove to the location and parked as directed. Richardson approached, demanding Brewer’s money. Holt already had her knife out at this point. Brewer said he did not have any money. In response, Richardson began stabbing Brewer with his knife through the open, driver’s side window. As Brewer attempted to roll up the window, Richardson told Holt to “stick” Brewer with her knife. Brewer turned to Holt and exclaimed, “You too?”

According to the statement Holt gave to police officers shortly after Brewer’s murder, she stabbed Brewer “maybe three times,” but explained, “I didn’t stick him very hard except once when [Brewer] hit me.” According to material submitted in connection with the Board hearing in April 2008, Holt subsequently stated she had stabbed Brewer several times but could not strike him with force because of her reluctance to hurt him. At the 2008 hearing itself, Holt said she believed Brewer moved his right arm toward her and got scratched by her knife, which she was pointing at his ribs.

After Richardson pulled Brewer out of the truck, Holt and Richardson drove away without determining whether Brewer was still alive. Holt was arrested a few days later in Brewer's truck.

2. Holt's Plea, the Reduction of Her Conviction and Imposition of Sentence

Holt pleaded guilty to first degree murder and robbery. At her sentencing hearing on July 18, 1984 Holt sought to reduce the conviction from first degree to second degree murder because she had not inflicted the fatal wounds and had cooperated with law enforcement by identifying Richardson and attempting to obtain corroboration of his involvement. The prosecutor verified Holt's cooperation, stating, "I was there for the preliminary hearing of the other defendant in this case. We had absolutely no corroboration. [Holt] was very helpful to us in trying to get corroboration and identify him." The prosecutor also confirmed Holt had not inflicted the fatal wounds: "I've spoken to the investigating officer and the coroner in this case I have looked at the autopsy pictures of the decedent. There apparently appear to be two different sets of wounds: One superficial scratch wound on the right arm of the victim. The other appears to be the fatal wounds, which were in the area of the left thorax or left chest area of the victim."³

The court reduced Holt's conviction to second degree murder and sentenced her to an indeterminate state prison term of 15 years-to-life, plus a one-year enhancement for use of a deadly and dangerous weapon. Holt began serving her term on July 26, 1984; and her minimum eligible parole date was December 14, 1992.

³ The autopsy report described 13 stab wounds: nine located in the left chest and head area and four to the right hand. It is not clear from the report which wound the prosecutor was referring to as the superficial scratch on Brewer's right arm. The autopsy report describes one of the right hand wounds as "superficial" and "1/8 inch in depth" and another of the right hand wounds as "1/8 inch in depth."

3. *Holt's Prison Record*

a. *Disciplinary record*

Holt had 14 serious misconduct violations (reported on CDC Form 115 and commonly referred to as a “115”) in her first four years in prison, from November 1984 through August 1988, and two additional, albeit nonviolent, serious rule violations in 1996. Several of these early violations involved Holt’s continued use of illegal drugs while in prison. She was counseled for minor misconduct (reported on CDC Form 128-A and commonly referred to as a “chrono”) 39 times during the first nine years of her incarceration, including for failing to report or reporting late to her work assignment, rude conduct and being “out of bounds.”

Holt explained she had often misbehaved in those initial years of imprisonment because she had “a big attitude.” She attributed her turn around—she was discipline free for 12 years prior to the 2008 Board hearing—to becoming “an HIV peer educator, and after testing, I found out I wasn’t sick, my health was really good, and I just said, ‘Hey, I got another chance here, you know? I’m healthy. I’m still young, you know? It’s time to do this right. I can get out of this.’ I [had not even] thought about getting out of prison yet, you know? But I came around. I, you know, I was ready to do it right. I was tired.”

b. *Participation in rehabilitation, college courses and other programs*

As both the Board and the Governor noted, for many years Holt made significant efforts to improve herself while in prison. As of April 2008 she had been sober for nearly 20 years. As discussed, Holt had continued to use drugs during the first several years of her sentence, but she stopped all drug use after being disciplined in 1988 for possession of a controlled substance (heroin) and a syringe. Holt participated in numerous drug treatment programs, including Alcoholics Anonymous, Narcotics Anonymous and the Forever Free Substance Abuse Program. In September 1996, as part of her participation in these programs, Holt wrote a letter to Brewer’s family apologizing for her actions.

Holt participated in other therapeutic and prison programs, including Long Termer’s Organization, New Beginnings, Victim Impact, Mental Health Integrity Course, Anger Management, Seven Habits of Highly Effective People, Pathways to Wholeness

and Prison Pups, which trains service dogs. In 2006 Holt became a peer mentor for the Forever Free Substance Abuse Program.

Holt, who had graduated from high school and attended some college before her conviction for Brewer's murder, also pursued her education in prison, completing more than 50 percent of the course work required to obtain an associate degree. Holt was also studying to be a certified drug/alcohol counselor and enrolled in an internship program through Mental Health Systems.

c. Laudatory reports

Holt received several positive reports from prison staff and other individuals she had worked with in the various prison programs. For example, one correctional officer wrote on January 9, 2008, "When I first arrived in my position, Inmate Holt was very helpful to the unit with her involvement as a core member in the substance abuse program. She was instrumental in helping with resolving inmate issues within the unit. In the short time that I have observed the behavior of Inmate Holt, I have witnessed her work hard at furthering her education. She has always been very respectful towards all staff and the inmate population and she appears to be a very responsible individual. Her demeanor is pleasant to be around, and during conversations I have had with Holt, she appears to accept responsibility for her past behavior. She is continually working hard on herself to be successful in life."

4. Holt's Psychological Evaluations

In June 2002 Dr. Robert D. McDaniels submitted the eighth (his fourth) psychological evaluation of Holt to the Board. Although Holt had been previously diagnosed with antisocial personality disorder, McDaniels removed the diagnosis, finding "[Holt] demonstrates care and concern for others, has lent herself to a lot of opportunities in which she helps other people. She has been adhering to institutional norms, and by all appearances has changed her orientation to that of a normal individual." With respect to Holt's dangerousness, McDaniels concluded, "[Holt] has not demonstrated herself to be dangerous within a controlled setting in the interval period. Should the inmate maintain her sobriety and work ethic, she would not have significant risk factors if released to the

community.” Other doctors who assessed Holt in 2003, 2004 and 2005 reached the same conclusion.

In the last report submitted to the Board on March 22, 2008, the evaluating psychologist stated, “Since Ms. Holt’s last [board parole hearing], she has continued to program in a stable and positive manner. She has participated in self-help groups, maintained a steady job assignment, and has remained disciplinary free. Her plans for parole were well articulated at the time of this evaluation. Additionally, she has formulated a relapse prevention plan for substance abuse. Her current risk for violent recidivism was estimated to be low.”

5. Holt’s Parole Plans and Letters of Support

In April 2008 Holt had been accepted into a residential treatment program upon release from prison. Holt had more than 13 letters of support from family members and people with whom she had worked, including her then-current job supervisor. Her immediate plan upon release was to accept a job offer with a Los Angeles sober living home in a maintenance position and to pursue a career in substance abuse counseling.

6. The Board’s Decisions Holt Was Suitable for Parole; the Governor’s Reversals

a. The 2005, 2006 and 2007 Board decisions and Governor’s reversals

On January 20, 2005, at Holt’s eighth parole hearing, the Board found her suitable for parole for the first time. The Board found Holt had showed signs of remorse, understood the nature and magnitude of the offense, accepted responsibility for the offense and demonstrated a “desire to change toward good citizenship.” Regarding Holt’s disciplinary record, the presiding commissioner stated, “I do acknowledge that you have a number of 115s and 128 counseling chronos. The 115s number a total of 16, the last one being in 1996. . . . I would submit nine years within these walls is a significant period of time to stay 115 free. Your last 128(a) counseling chrono was in 1993, although you had 39 of those. . . . That’s actually 18 years. That’s a long, long time also. But we also looked up, for the record, the 115s and what they were for and especially . . . the latest one. And it’s not something that would indicate it would even come close to being violent at all”

On May 31, 2005 the Governor reversed the Board's decision, finding Holt's misconduct in prison—described as demonstrating a “repetitive disregard for and an unwillingness or inability to curb her behavior to the rules of her environment”—weighed against her suitability for parole. Additionally, although finding Holt had “acknowledged responsibility and expressed remorse,” the Governor stated, “The gravity of the murder perpetrated by Ms. Holt is alone a sufficient basis for me to conclude at this time that her release from prison would pose an unreasonable public-safety risk.”

The Board again found Holt suitable for parole in 2006 and 2007; those decisions were reversed by the Governor as well. In his 2007 statement of reasons, in addition to other negative factors the Governor identified as indicating Holt's current dangerousness if released on parole, including the gravity of the commitment offense itself, the Governor expressed concern about Holt's recent change in her description of the actual attack on Brewer, which appeared to minimize her role as an active participant in the murder: “Although Ms. Holt says she accepts responsibility for her actions and is remorseful, her version of events surrounding the crime varied over the years. Ms. Holt admitted to the probation officer that she stabbed Mr. Brewer. She now claims, however, as she recently told the 2007 Board, ‘I don't think I stabbed him.’ She also said, ‘I may . . . have scratched him in the tussle, but I don't think I ever pushed the knife in him.’ In contrast, she told the 2006 Board, ‘I think I stuck him a bit.’ Indeed, she told the 2006 Board that she stabbed Mr. Brewer on Mr. Richardson's cue to do so. She also told the Board that after she ‘went with a jab,’ Mr. Brewer looked at her and asked, ‘you too?’ before he was stabbed to death. These significant changes to Ms. Holt's story—including changes made as recently as at her 2007 hearing—suggest that Ms. Holt does not accept her responsibility for the crime.”

b. *The 2008 Board decision and Governor's reversal*

On April 24, 2008 the Board found Holt suitable for parole for the fourth time. During the Board hearing, in response to the Governor's concerns, one of the commissioners asked Holt whether she had stabbed Brewer or scratched him. Holt responded, “I scratched him. The reason why I know that is because from the autopsy

report of what it showed, and I know I never raised my hands any further than my [waist] level nor did I reach across at any time, so there's no way that I could have made any wounds [to the left upper portion of Brewer's body]. . . . I feel that when he turned and said, 'Not you;' that his arm went out towards me because I did have my knife pointing towards his ribs and . . . I think I feel that's when his arm got scratched." Holt then explained the distinction whether she scratched or stabbed Brewer was important to her because "had I not set him up for the robbery, that man could still be alive today. . . . It's important to me as a person to know that . . . I did not make the stab wound in. That I did not purposely—I'm not purposely responsible. I'm responsible, but not in the responsible way of the stabbing." The Board found Holt's explanation satisfactory, concluding she "certainly show[ed] an understanding of the magnitude and the nature of what happened, why it happened, and [her] responsibility in that."

On September 10, 2008 the Governor reversed the Board's decision: "[D]espite the positive factors I considered,^[4] I believe the negative factors identified in this statement of decision indicate that Ms. Holt would present a current unreasonable risk of danger to public safety if released on parole. The gravity of the crime and Ms. Holt's history of criminal activity^[5] and misconduct in prison are factors supporting my decision, but I am particularly troubled by her history of substance abuse and the evidence that she is increasingly minimizing her role in the crime and continues to lack insight into her crime. This evidence indicates that she does not understand the circumstances that led to the crime and that she has not done enough to ensure that it will not happen again."

As he had in 2007, the Governor explained Holt's changing story about whether she had stabbed or merely scratched Brewer demonstrated her failure to take full responsibility for, and lack of insight into, her actual participation in the crime: "Most

⁴ The positive factors considered by the Governor included Holt's "efforts in prison to enhance her ability to function within the law upon release" and her "favorable evaluations from various correctional staff members over the years."

⁵ Holt's adult arrests and/or convictions include disorderly conduct, prostitution, shoplifting, sale of narcotics, trespass and forgery.

recently, she told the 2008 Board that ‘during the struggle the cuts got placed on him [Mr. Brewer].’ She further stated that she ‘did not make the stab wound in.’ These significant changes to Ms. Holt’s story—including changes made as recently as at her 2008 hearing—suggest that Ms. Holt does not accept full responsibility for the crime and does not have full insight into the crime.”

7. The Petition for Writ of Habeas Corpus

On August 19, 2009, after finding the Governor’s decision denying Holt’s parole was not supported by “some evidence,” the superior court granted Holt’s petition for writ of habeas corpus. The court explained, although the crime itself was especially heinous, Holt’s “individual role in the murder” was not; “changes in [Holt’s] attitude and mental state indicate that she has undergone rehabilitation and is no longer a risk of danger to society”; and, although Holt had “engaged in serious misconduct in prison,” she “has been discipline-free for over a decade and has not received a CDC 115 for violence or for drugs for twenty years.”

With respect to the Governor’s concern that Holt’s most recent descriptions of the commitment offense appear to minimize her role in the crime, the court found, “[Holt] accepted full responsibility for the victim’s death because she lured him to the remote location and set him up for the robbery. She also prevented him from leaving the vehicle after her crime partner began the attack. [Holt’s] contention that she did not cause the fatal stab wounds is supported by the official records. When a prisoner’s version is not physically impossible and does not strain credulity in such a way that it seems delusional, dishonest or irrational, the fact that she denied some aspects of the offense is not some evidence that she continues to pose an unreasonable risk of danger to society. [Citation.] The fact that [Holt] claims that she did not intend to kill the victim or produce the fatal wounds is not evidence of a lack of insight because these assertions are ‘not necessarily inconsistent with the evidence.’ [Citation.] [Holt] expressed remorse for the death of the victim and wrote a letter to his family as a means of making amends during her twelve step programming.” The court, however, did not address the fact that Holt’s current description of her participation in the attack on Brewer is at variance with her consistent

accounts of the crime given immediately after the murder and for the next 20 years—a change at the center of the Governor’s decision to reverse the Board’s grant of parole.

Finding the only factors tending to indicate Holt’s unsuitability for parole are the immutable circumstances of the commitment offense and misconduct early in her term of incarceration, the superior court concluded the Governor’s decision “is not supported by some evidence.” The court granted Holt’s petition, vacated the governor’s reversal and reinstated the Board’s April 24, 2008 decision granting parole.⁶ The warden of the California Institute for Women in Corona filed a timely notice of appeal.⁷ On September 17, 2009 the warden filed a petition for writ of supersedeas to stay the superior court’s order pending resolution of the appeal. We summarily denied the petition on September 24, 2009. Holt was released from prison under parole supervision shortly thereafter.

DISCUSSION

1. *Governing Law*

The purpose of parole is to help prisoners “reintegrate into society as constructive individuals as soon as they are able,” without being confined for the full term of their sentence. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477 [92 S.Ct. 2593, 33 L.Ed.2d 484].) Parole release decisions are essentially discretionary; they “entail the Board’s attempt to predict by subjective analysis” the inmate’s suitability for release on parole. (*Rosenkrantz, supra*, 29 Cal.4th at p. 655.) That prediction requires analysis of

⁶ On April 16, 2009, while Holt’s petition for writ of habeas corpus was pending in the superior court, the Board again found her suitable for parole. On September 11, 2009, after the petition had been granted and the notice of appeal had been filed, the Governor again reversed the Board’s grant of parole. At oral argument both counsel for Holt and the Attorney General agreed these subsequent events have no bearing on our review of the superior court’s order granting the petition for writ of habeas corpus.

⁷ Although this appeal concerns the action of the Governor, the appellant—and the respondent for the petition for writ of habeas corpus filed by Holt in the superior court—is the warden of the prison where the inmate is incarcerated. (Pen. Code, § 1477.)

individualized factors on a case-by-case basis, and the Board's (and, ultimately, the Governor's) discretion in that regard is ““almost unlimited.”” (*Ibid.*)

Notwithstanding the breadth of that discretion, however, Penal Code section 3041, which governs the substance and procedure for the Board's parole release decisions, creates a cognizable liberty interest in parole protected by the due process clause of the California Constitution. (Cal. Const., art. I, § 7, subd. (a); *Lawrence, supra*, 44 Cal.4th at p. 1205 [“the judiciary is empowered to review a decision by the Board or the Governor to ensure that the decision reflects ‘an individualized consideration of the specified criteria’ and is not ‘arbitrary and capricious’”].)⁸

As an inmate's minimum eligible parole release date approaches, Penal Code section 3041, subdivision (b), requires the Board to set a release date “unless it determines . . . that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed.” In making its decision the Board must consider all relevant, reliable information. Factors tending to indicate suitability include: (1) the absence of a juvenile record, (2) stable social history, (3) signs of remorse, (4) significant life stress motivated the crime, (5) battered woman syndrome, (6) no significant history of violent crime, (7) inmate's age, (8) realistic plans for the future, and (9) institutional behavior. (Cal. Code Regs., tit. 15, § 2402, subd. (d).) Circumstances tending to show unsuitability include: (1) commitment offense was committed “in an especially heinous, atrocious or cruel

⁸ Penal Code section 3041, subdivision (a), provides, “One year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally set a parole release date as provided in Section 3041.5. . . . The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime.”

manner,”⁹ (2) previous record of violence, (3) unstable social history, (4) sadistic sexual offenses, (5) psychological factors, and (6) serious misconduct while incarcerated. (Cal. Code Regs., tit. 15, § 2402, subd. (c).)

In exercising its discretion, the Board “must consider all relevant statutory factors, including those that relate to postconviction conduct and rehabilitation.” (*Lawrence, supra*, 44 Cal.4th at p. 1219.) “It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public.” (*Id.* at p. 1212.)

The Board can, of course, rely on the aggravated circumstances of the commitment offense as a reason for finding an inmate unsuitable for parole; however, “the aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner’s pre- or post-incarceration history, or his . . . current demeanor and mental state, indicates that the implications regarding the prisoner’s dangerousness that derive from his . . . commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety.” (*Lawrence, supra*, 44 Cal.4th. at p. 1214.)

A prisoner’s lack of insight into his or her criminal behavior or failure to take responsibility may provide the required nexus between the commitment offense and the prisoner’s current dangerousness. (*Lawrence, supra*, 44 Cal.4th at p. 1228 [“[i]n some

⁹ The regulation specifies the factors to be considered in determining whether the offense was committed in an especially heinous, atrocious or cruel manner as: “(A) Multiple victims were attacked, injured or killed in the same or separate incidents. [¶] (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder. [¶] (C) The victim was abused, defiled or mutilated during or after the offense. [¶] (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering. [¶] (E) The motive for the crime is inexplicable or very trivial in relation to the offense.” (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1).)

cases, such as those in which the inmate has . . . shown a lack of insight or remorse, the aggravated circumstances of the commitment offense may well continue to provide ‘some evidence’ of current dangerousness”]; *In re Shaputis* (2008) 44 Cal.4th 1241, 1261, fn. 20 [“petitioner’s failure to take full responsibility for past violence, and his lack of insight into his behavior, establish that the circumstances of petitioner’s crime and violent background *continue* to be probative to the issue of his *current* dangerousness”]; see *In re Calderon* (2010) 184 Cal.App.4th 679, 690 [“[L]ike all evidence relied upon to find an inmate unsuitable for release on parole, ‘lack of insight’ is probative of unsuitability only to the extent that it is both (1) demonstrably shown by the record and (2) rationally indicative of the inmate’s current dangerousness”]; see also *In re Rozzo* (2009) 172 Cal.App.4th 40, 62, fn. 9 [“evidence that demonstrates a prisoner’s insight, or lack thereof, into the reasons for his commission of the commitment offense is relevant to a determination of the prisoner’s suitability for parole”].)

Once the Board sets a parole date, the California Constitution empowers the Governor to review the parole decision of an inmate who has been convicted of murder and sentenced to an indeterminate prison term. (Cal. Const., art. V, § 8, subd. (b).) The Governor’s decision to affirm, modify or reverse the decision of the Board rests on the same factors that guide the Board’s decision (*ibid.*) and must be based on “materials provided by the parole authority.” (Pen. Code, § 3041.2, subd. (a).) “Although these provisions contemplate that the Governor will undertake an independent, de novo review of the prisoner’s suitability for parole, the Governor’s review is limited to the same considerations that inform the Board’s decision.” (*Rosenkrantz, supra*, 29 Cal.4th at pp. 660-661.)

2. *Standard of Review*

“[W]hen a court reviews a decision of the Board or the Governor, the relevant inquiry is whether some evidence supports the *decision* of the Board or the Governor that the inmate constitutes a current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings.” (*Lawrence, supra*, 44 Cal.4th at p. 1212.) The standard is “unquestionably deferential,” and “‘*limited to*

ascertaining whether there is some evidence in the record that supports the [Governor's] decision.” (Id. at p. 1210; accord, *In re Shaputis*, supra, 44 Cal.4th at p. 1258 [“[w]hen a court reviews the record for some evidence supporting the Governor’s conclusion that a petitioner currently poses an unreasonable risk to public safety, it will affirm the Governor’s interpretation of the evidence so long as that interpretation is reasonable and reflects due consideration of all relevant statutory factors”].) Nonetheless, the standard “certainly is not toothless, and ‘due consideration’ of the specified factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness.” (*Lawrence*, at p. 1210.)

We review de novo an appeal from the superior court’s decision to grant the petition for writ of habeas corpus that, as here, was based solely on documentary evidence. (*Rosenkrantz*, supra, 29 Cal.4th at p. 677.)

3. *The Governor’s Decision To Reverse the Board’s Grant of Parole Is Not Supported by “Some Evidence” Holt Continues To Pose a Threat to Public Safety*

As did the superior court, we agree at least some evidence supports the Governor’s determination that the commitment offense—the murder of James Brewer in the course of a robbery to obtain money to buy drugs—was carried out in an especially heinous manner. As the Governor explained, Holt “plotted and orchestrated a robbery against Mr. Brewer, during which she and Mr. Richardson stabbed him to death using knives, in an effort to get money to buy heroin. . . . The motive was very trivial in relation to the magnitude of the crime she committed.” The Governor also noted the manner in which the murder was carried out “demonstrated an exceptionally callous disregard for Mr. Brewer’s suffering As Ms. Holt admitted to the 2006 Board, after stabbing Mr. Brewer and searching him for money, she and her crime partner left him on the street, without knowing whether he was dead or alive.”¹⁰

¹⁰ The superior court found Holt and Richardson’s trivial motive for the murder—to obtain money for their drug habit—and the fact the victim had not died instantly,

Accordingly, the limited question before us is whether the Governor reasonably interpreted Holt’s changing description of her role in the murder of Brewer as evidence demonstrating a lack of insight that, together with the gravity of the commitment offense, are probative of her current dangerousness. (See *Lawrence, supra*, 44 Cal.4th at p. 1212 [“under the statute and the governing regulations, the circumstances of the commitment offense (or any of the other factors related to unsuitability) establish unsuitability if, and only if, those circumstances are probative of the determination that a prisoner remains a danger to the public”]; see also *In re Calderon, supra*, 184 Cal.App.4th at p. 690 [“the incantation of ‘lack of insight,’ a more subjective factor than those specified in the regulations as indicative of unsuitability, has no talismanic quality”; lack of insight is probative of unsuitability only if supported by the record and “rationally indicative of the inmate’s current dangerousness”].)¹¹

Viewed in the abstract—that is, considering only Holt’s various statements during the past 25 years about her actions and her mental state on July 10, 1983—we would necessarily conclude there is some evidence that Holt lacks full insight into, and minimizes her culpability for, Brewer’s death. To be sure, Holt, in general, accepts responsibility for Brewer’s murder: She readily admits that, but for her involvement in the crime, Brewer would not be dead. As she told the Board, “Jimmy Brewer lost his life and it’s my fault. It’s my fault because I set him up for a robbery. . . . I take responsibility.” And her current version of Richardson’s and her actions during the murder is fully consistent with the evidence, including the autopsy report, that indicates she did not inflict the fatal wounds to Brewer’s head and left shoulder area.

struggling for his life against two attackers, provided some evidence Holt’s crime was especially heinous.

¹¹ The Governor’s statement of reasons also identified Holt’s long history of substance abuse, which continued while in prison, and her early, serious misconduct while incarcerated, as additional aggravating circumstances supporting his reversal of the Board’s decision to grant parole. However, on appeal the Attorney General argues only that Holt’s lack of insight, coupled with the gravity of the commitment offense, constitute the requisite “some evidence” to support the Governor’s decision.

Had Holt consistently maintained that she did not actually stab Brewer, but had merely held out a knife that scratched him when he stretched his arm toward her, perhaps, as the superior court found, it would be irrational for the Governor to conclude her ultimate acceptance of responsibility reflected a lack of insight into the nature of the crime and her participation in it. However, Holt did change her story, denying in the last several years that she was an active participant in a violent murder and contending she was merely the “set up” person. Moreover, as she told the Board in April 2008, although she accepts that she is responsible for Brewer’s death, “I’m not purposely responsible.” We understand that this transmutation of her role may be an important coping mechanism for Holt, allowing her to accept ultimate responsibility for Brewer’s murder while moving forward with her life—that certainly seems to be reflected in a discussion of this point during the April 2008 Board hearing.¹² But we simply cannot say the Governor’s interpretation of this change as evidence that Holt lacks insight into her capability for violence was arbitrary or capricious.

There would appear to be, therefore, some evidence to support the Governor’s decision to reverse the Board’s grant of parole, not merely because the crime was particularly egregious, but because Holt’s failure to take full responsibility for her past violence, and her lack of insight into her behavior, suggest that the circumstances of the crime and Holt’s role in it “*continue* to be probative to the issue of [her] *current* dangerousness.” (*In re Shaputis*, *supra*, 44 Cal.4th at p. 1261, fn. 20; see *id.* at p. 1258 [court “will affirm the Governor’s interpretation of the evidence so long as that interpretation is reasonable and reflects due consideration of all relevant statutory factors”]; *Lawrence*, *supra*, 44 Cal.4th at p. 1226 “[o]ur deferential standard of review

¹² During the hearing Holt agreed with the presiding commissioner’s characterization of her attempt to explain why it was important to her to describe her role in the stabbing death as inflicting only scratches, “But as a person and in part of your solitude so to speak as an individual, you’re going, you know, ‘I didn’t kill him.’ I mean I didn’t actually have it in me to kill this guy.”

requires us to credit the Governor’s findings if they are supported by a modicum of evidence”].)

However, in conducting our “unquestionably deferential” review of the Governor’s decision to reverse the Board’s grant of parole, *Lawrence* and *Shaputis* mandate that we not consider only Holt’s crime and her statements concerning her role in it (whether past or present, consistent or changing) while disregarding other, significant evidence in the record before the Board and the Governor that favor Holt’s release on parole. It is, of course, not our prerogative to reweigh the various suitability and unsuitability factors or to substitute our own view of Holt’s candidacy for parole for that of the Governor: Neither *Lawrence* nor *Shaputis* fundamentally expands the limited nature of judicial review in parole cases or “shift[s] the ultimate discretionary decision of parole suitability from the executive branch to the judicial branch.” (*Lawrence, supra*, 44 Cal.4th at p. 1212; see *In re Shaputis, supra*, 44 Cal.4th at p. 1260.) “[T]he precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the Governor” (*Rosenkrantz, supra*, 29 Cal.4th at p. 677; accord, *Shaputis*, at pp. 1260-1261 [“[a]s long as the Governor’s decision reflects *due consideration of the specified factors* as applied to the individual prisoner in accordance with applicable legal standards, the court’s review is limited to ascertaining whether there is some evidence in the record that supports the Governor’s decision,” quoting *Rosenkrantz* at p. 677].)

Nonetheless, as the Supreme Court emphasized in *Lawrence, supra*, 44 Cal.4th at page 1212, “It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public.”¹³ That

¹³ Although the Supreme Court in *Lawrence* specifically addressed the propriety of exclusive reliance on the circumstances of the commitment offense as a factor in determining whether a prisoner should be released on a parole, the Court’s opinion made clear its analysis was directed to consideration of other unsuitability factors as well: “[U]nder the statute and governing regulations, the circumstances of the commitment offense (or any of the other factors related to unsuitability) establish unsuitability if, and

is, the mere presence of one factor indicating unsuitability, standing alone, will not necessarily support a rational conclusion, giving due consideration to all the circumstances tending to show suitability for release as applied to the individual prisoner, that the inmate poses a current threat to public safety. That factor—here the gravity of the commitment offense and Holt’s failure to embrace the full extent of her responsibility for it—must be viewed in the context of the prisoner’s entire record. “[T]he relevant inquiry for a reviewing court is . . . whether the identified facts are *probative* to the central issue of *current* dangerousness when considered in light of the full record before the Board or the Governor.” (*Id.* at p. 1221; accord, *In re Shaputis*, *supra*, 44 Cal.4th at p. 1255.)

On this record, considering this specific prisoner, there is a modicum of evidence indicating a lack of full insight. Nonetheless, when we consider how that factor interrelates to the other factors indicating parole suitability, there is no “rational nexus” between Holt’s present assessment of the nature of her role in the murder of James Brewer and any current threat to public safety. (See *Lawrence*, *supra*, 44 Cal.4th at pp. 1221, 1227.) Whatever changes or omissions in her account of the details of the murder, Holt is not Richard Shaputis, a criminal with a history of violence and a manifest failure “to gain insight or understanding into either his violent conduct or his commission of the commitment offense.” (*In re Shaputis*, *supra*, 44 Cal.4th at p. 1260 [“Evidence concerning the nature of the weapon, the location of ammunition found at the crime scene, and petitioner’s statement that he had a ‘little fight’ with his wife support the view that he killed his wife intentionally, but as the record also demonstrates, petitioner *still* claims the shooting was an *accident*. This claim, considered with evidence of petitioner’s history of domestic abuse and recent psychological reports reflecting that his character remains unchanged and that he *is* unable to gain insight into his antisocial behavior despite years of therapy and rehabilitative ‘programming,’ all provide some evidence in

only if, those circumstances are probative of the determination that a prisoner remains a danger to the public.” (*Lawrence*, *supra*, 44 Cal.4th at p. 1212.)

support of the Governor’s conclusion that petitioner remains dangerous and is unsuitable for parole.” (Fn. omitted.)].)

Although clearly not a law-abiding citizen at the time of the murder, Holt was a nonviolent drug addict who engineered a robbery gone tragically wrong to feed her heroin habit. She has repeatedly acknowledged her responsibility and demonstrated remorse for her participation in the robbery-murder. Having now addressed the substance abuse addiction that led to Brewer’s death and successfully participated in decades of productive work and positive programming—and with psychological evaluations that consistently estimate her current risk for violent recidivism as “low”—any continued insistence that, somehow, in her heart she was not a murderess (“I’m not purposely responsible”) is simply not probative to the central issue of current dangerousness. (Cf. *In re Calderon*, *supra*, 184 Cal.App.4th at p. 692 [“The Governor’s conclusion that Calderon is currently dangerous due to his lack of insight into the effects of his past substance abuse wholly ignores the evidence we have just described [¶] . . . There is no evidence his former desire for drugs or alcohol might still be a motivating force. . . . There is no evidence Calderon denies he had a drug or alcohol problem or denied he had a problem for some period of his incarceration.”].)

In sum, the Governor’s decision Holt is unsuitable for parole is not supported by some evidence. Accordingly, the order of the superior court granting Holt’s petition for writ of habeas corpus and vacating the Governor’s reversal of the Board’s grant of parole is affirmed.¹⁴

¹⁴ The Attorney General argues, should we agree with the superior court that the deferential some-evidence standard has not been satisfied, the proper remedy is to remand to the Governor for reconsideration rather than order reinstatement of the Board’s decision granting Holt’s release on parole. However, as has been explained in a number of recent decisions, when an appellate court reviews the record before the Governor and concludes there is an absence of evidence to support his decision to reverse the Board’s grant of parole, further consideration by the Governor will not change this fact and a remand to the Governor would serve no useful purpose. (*In re Moses* (2010) 182 Cal.App.4th 1279, 1314; *In re Masoner* (2009) 179 Cal.App.4th 1531, 1537-1538; *In re Vasquez* (2009) 170 Cal.App.4th 370, 386; see *Lawrence*, *supra*, 44 Cal.4th at pp. 1201,

DISPOSITION

The order of the superior court granting Holt's petition for writ of habeas corpus is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.

1229 [affirming Court of Appeal decision to vacate Governor's denial of parole and reinstate the Board's grant].)